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**SAN DIEGO CA 92101-2926**

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**MAR 25 2004**

In re Application of  
Eliezer Masliah et al  
Application No. 09/933,640  
Filed: August 20, 2001  
Attorney Docket No. 6627-PA1071

OFFICE OF PETITIONS  
: DECISION ON PETITION  
: UNDER 37 CFR 1.78(a)(3)  
:  
:

This is a decision on the petition under 37 CFR 1.78(a)(3), filed June 24, 2003, to accept an unintentionally delayed claim under 35 U.S.C. § 120 and 365(c) for the benefit of prior-filed international Application No. PCT/US01/05569, filed February 20, 2001.

The petition is **DISMISSED**.

A petition for acceptance of a claim for late priority under 37 CFR 1.78(a)(3) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after the expiration of the period specified in 37 CFR 1.78(a)(2)(ii). In addition, the petition under 37 CFR 1.78(a)(3) must be accompanied by:

- (1) the reference required by 35 U.S.C. § 120 and 37 CFR 1.78(a)(2)(i) of the prior-filed application, unless previously submitted;<sup>1</sup>
- (2) the surcharge set forth in § 1.17(t); and
- (3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2)(ii) and the date the claim was filed was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional.

The instant application was filed on August 20, 2001, and was pending at the time of filing of the instant petition.

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<sup>1</sup> Any nonprovisional application or international application designating the United States of America claiming the benefit of one or more prior-filed copending applications or international applications designating the United States of America must contain or be amended to contain a reference (amendment to the first line of the specification following the title or in an application data sheet (ADS)) to each such prior-filed application, identifying it by application number (consisting of the series code and serial number) or international application number and international filing date and indicating the relationship of the applications. Cross references to other related applications may be made when appropriate (see § 1.14).

The reference to the prior-filed application was not included in the manner specified in 37 CFR 1.78(a)(2)(i) (i.e., in an ADS or in an amendment to the first sentence following the title of the specification) or filed within the period specified in 37 CFR 1.78(a)(2)(ii).

The instant petition does not comply with item (1)

In view of the above, a renewed petition under 37 CFR 1.78(a)(3), along with an amendment to the first line of the specification (or an Application Data Sheet in accordance with 37 CFR 1.76(b)(5)) to include the 35 U.S.C. §§ 120 and 365(c) benefits to the instant application is required.

For the above-noted reason, the petition under 37 CFR 1.78(a)(3) cannot be granted.

Further correspondence with respect to this matter should be addressed as follows:

By mail:                      Mail Stop PETITIONS  
                                    Commissioner for Patents  
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Any questions concerning this matter may be directed to the undersigned at (703) 305-8859.



Karen Creasy  
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for Patent Examination Policy